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Response to: Time to turn the tide: WHO's engagement with non-state actors and the politics of stakeholder governance and conflicts of interest, BMJ 2014;348:g3351 : Time to debate WHO's understanding of conflicts of interest

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DOI: <https://doi.org/10.1136/bmj.g3351>

Posted at the Zurich Open Repository and Archive, University of Zurich

ZORA URL: <https://doi.org/10.5167/uzh-122177>

Journal Article

Published Version



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Originally published at:

Richter, Judith (2015). Response to: Time to turn the tide: WHO's engagement with non-state actors and the politics of stakeholder governance and conflicts of interest, BMJ 2014;348:g3351 : Time to debate WHO's understanding of conflicts of interest. BMJ : British medical journal, 348:g3351.

DOI: <https://doi.org/10.1136/bmj.g3351>

Time to debate WHO's understanding of conflicts of interest

From its beginning, the question underlying the institutional reform of the World Health Organization was whether donors would gain more influence over WHO's work and priorities. Therefore, continued deliberations over WHO's draft Framework of Engagement with non-State actors (FENSA) are of critical importance.

Readers may feel reassured by such assertions as:

"In actively managing institutional conflict of interest and the other risks of engagement..., WHO aims to avoid allowing the conflicting interests of a non-State actor to exert, or be reasonably perceived to exert, undue influence over the Organization's decision-making process or to prevail over its interests." (para 25)

However, the latest publicly available draft contains a problematic conceptualisation of conflict of interest (CoI). By clouding the differences between conflicts of interest and conflicting and diverging interests, CoI theory and law become reframed despite the demands of those Member States who twice rejected the draft framework at the World Health Assemblies in May 2014 and 2015. They had requested further consultations on both conflicts of interest and relations with the private sector stressing the importance of an appropriate framework.

If uncorrected, the CoI section will continue to confuse the debates. Any resulting Framework will lead to inadequate regulation of conflicts of interest. This will increase the influence of corporations and other actors who provide voluntary contributions to WHO. Those who act as countervailing powers within UN agencies, governments, health professional communities, academia, and civil society will be further side-lined from public debates.

Let us scrutinise the currently proposed CoI definitions:

"A conflict of interest arises in circumstances where there is potential for a secondary interest (a vested interest in the outcome of WHO's work in a given area) to unduly influence, or where it may be reasonably perceived to unduly influence, either the independence or objectivity of professional judgement or actions regarding a primary interest (WHO's work)... " (para 23)

"An institutional conflict of interest is a situation where WHO's primary interest as reflected in its Constitution may be unduly influenced by the conflicting interest of a non-State actor in a way that affects, or may reasonably be perceived to affect, the independence and objectivity of WHO's work." (para 24)

As usual, the devil is in the detail.:

At first sight, WHO's CoI concepts appear to be modeled on the definitions widely disseminated through the 2009 Report of the Institute of Medicine (IoM) Committee on Conflict of Interest in Medical Research, Education and Practice. However, they have been significantly altered as we will explain below

The Report defines an individual conflict of interest as “a set of circumstances that create a risk that professional judgements or actions regarding a primary interest will be unduly influenced by a secondary interest.”.

The 2009 Report continues: "Institutional conflicts of interest arise when an institution's own financial [secondary] interest or those of its senior officials pose risks to the integrity of the institution's primary interests..."

Until now WHO's leadership has not welcomed debate of its understanding of conflicts of interest. The reflections of Professor of Law, Anne Peters may trigger this much needed debate. Please note the words WITHIN and BETWEEN.

In order to achieve a useful understanding of the CoI concept in global public governance, Peters suggested the following:

- 1) to use a narrowly pitched, legally-significant concept of conflict of interest;
- (2) to avoid mixing distinctions between ‘conflicts of interest’ and what some call ‘conflicting’ or ‘diverging’ interests.

Like other experts, Peters suggests basing the concept of [individual] CoI on a fiduciary notion and stresses:

The legal “concept of [individual] conflict of interest relates to intrapersonal conflicts. The ‘conflictedness’ is a state of mind of a person who is empowered to take decisions on behalf of others.”

She expands this definition to institutional CoIs when she specifies that CoIs in that sense are “a... conflict arising WITHIN a human or an institution which is entrusted with such decision making.”

Peters proposes using terms, such as ‘conflicting interests’ to denote:

- a “clash” - a “conflict BETWEEN” - different actors;
- “a situation in which a professional or official decision maker is required to take into account various, often antagonistic, interests of different sectors of society.”

In Peters’ opinion, the CoI concept would be rendered useless “if all situations where a public, corporate, or professional decision-maker takes conflicting interests into account were qualified as a conflict of interest...”

If WHO allowed for this legally-concise understanding of CoI, it could lead to the following positive consequences:

1. Consideration of the overarching triple aim of CoI policies throughout the proposed Framework: that of ensuring (a) the integrity of decisions taken on the public’s behalf; (b) independence, e.g. from funding that risk distorting public mandates and agendas; and (c) maintaining the trustworthiness of and public trust in public officials and institutions.
2. Clearer distinction between actors with a mandate to act in the public interest from those who have the fiduciary mandate to make profit and those who advance a privatizing agenda;
3. Clearer distinction between CoI- and risk assessment procedures;
4. Recognition where only political action can address the underlying concerns.

Civil society organisations have been pointed out that WHO finds itself in a state of serious institutional conflict of interest ever since its leadership accepted the ‘reform’ premise that

WHO should be open to corporate- and other so-called innovative resources. Whatever the more detailed provisions, the Framework's proposed 'principles' of 'inclusiveness' and 'trust', and redefined Official Relations policy invite the foxes to build the chicken coop.

Like other UN agencies, WHO has long been starved of sustainable funding. WHO, the world's highest international health authority, seems locked in an ambiance of 'beggars can't be choosers.' This must be challenged. In order to allow for a proper discussion on an appropriate framework of engagement, civil society organisations are calling to lift the long-standing freeze of WHO's core funding. This is economically feasible. After all, WHO's budget is less than one third of that of the Atlanta-based Center for Disease Control.

References

Richter, J. (2014) Time to turn the tide: WHO's engagement with non-state actors and the politics of stakeholder governance and conflicts of interest, 19 May, BMJ 2014;348:g3351

WHO (2015) draft Framework of Engagement with non-State actors (FENSA)
http://apps.who.int/gb/ebwha/pdf_files/WHA68/A68_ACONF3Rev1-en.pdf?ua=1

WHA Resolution 67 (14), cf
A67/DIV/3, http://apps.who.int/gb/ebwha/pdf_files/WHA67/A67_DIV3-en.pdf?ua=1, p. 7

Lo, B. and M. Field, editors. Institute of Medicine (US) Committee on Conflict of Interest in Medical Research, Education and Practice, Eds. (2009). Conflict of interest in medical research, education and practice. Washington DC, National Academics Press, p. 6 & 46; p. 4 my emphases. Pdf version, see www.ncbi.nlm.nih.gov/books/NBK22942/

Peters, A. & L. Handschin eds (2012). Conflicts of interest in global, public and corporate governance. Cambridge & New York, Cambridge University Press, p. 363; & pp. 5-6, incl. fn 3, emphases added. I would suggest to use the "conflicting interest" terminology sparingly and call such situations by the most appropriate names. For example, a number of concerned civil society networks have started using the term "inherent conflict of interest." It would be more precise to say that in most of these cases, they refer to the inherently differing fiduciary mandates of corporations and public interest actors.

For statements and articles by civil society organisations on WHO's reform, see e.g.
<http://www.babymilkaction.org/archives/3787;>
<http://www.twn.my/title2/resurgence/2015/pdf/298-299.pdf>. For similar calls with respect to UN overall funding, see Martens, J & B. Adams (2015). Fit for whose purpose? Private funding and corporate influence in the United Nations. Bonn/New York,
https://www.globalpolicy.org/images/pdfs/Newsletter/newsletter_15_09_25.pdf

Competing interests: No competing interests